APPENDIX "A".

Opinion of the District Court of Appeal.

This is an appeal from a preliminary injunction ordered by the Superior Court of Los Angeles County.

The action was brought by the Attorney General in the name of the People of the State of California to enjoin Fairfax Family Fund, Inc., a Kentucky corporation, from conducting a small-loan business in California until a license is obtained in compliance with Financial Code section 24200.

On December 5, 1963, the plaintfif filed a complaint for injunction and charged, among other things, that the defendant had failed to comply with Financial Code section 24200.[1] It was necessary to have the summons published for the reason that personal service of the same could not be made in California. It is set forth in the proceedings that the defendant is a Kentucky corporation, that the designated agent in Kentucky for the service of process is Prentice Hall Corporation System, Frankfort, Kentucky; that the officers (president, vice president and secretary) and incorporators of the defendant are each residents of Chicago, Illinois. On December 17, 1963, the plaintiff filed a notice of motion for a preliminary injunction. Defendant filed an answer, and affidavits in opposition to the motion for a preliminary injunction. On January 31, 1964, a preliminary injunction was granted which enjoined the defendant from engaging in the small loan business (of

[1]Section 24200 provides: *"Requirement of license.* No person shall engage in the business of making or negotiating, for himself, or another, loans of money, credit, goods, or things in action, in the amount or of the value of three hundred dollars ($300) or less, without first obtaining a license from the commissioner."

$300 or less) until a license is obtained in compliance with Financial Code section 24200.

The facts in part are as follows:

The defendant is a Kentucky corporation engaged in the business of making small loans by mail to residents of California and thirty-one other states. The defendant solicits its business by mailing printed material from Kentucky to persons in California. The borrower executes and returns by mail a loan application and promissory note. The defendant secures a California independent contractor to conduct a local credit investigation. If the loan is approved, a check is mailed to the borrower and all payments are made by mail to the defendant's offices in Kentucky. The defendant maintains no offices in, nor do any of its corporate officers reside in, California. The defendant has over $22,000,000 in outstanding loans of which $3,500,000 are to California residents with an increase of approximately $90,000 per week to California residents. The defendant has never secured a small loan license as required by Financial Code section 24200. As a result of the defendant's failure to secure a license, the Commissioner of Corporations issued a desist and refrain order in accordance with Financial Code section 2460[2] which the defendant refused and failed to follow.

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[2]Section 24607 provides: *"Order to cease violation; rescission.* Whenever in the opinion of the commissioner any person is engaged in business as a lender or broker as defined in this division, without a license from the commissioner, or any licensee is volating any provision of this division, the commissioner may order said person or licensee to desist and to refrain from engaging in such business or further violating this division. If, after the order is made, a written request for a hearing is filed and no hearing is held wthin 30 days thereafter, the order is rescinded."

The defendant contended at the hearing, and in this court, that it is not subject to the provisions of the California Small Loan Law since it is engaged in interstate commerce, and any attempt to subject it to this control conflicts with the commerce clause of the Constitution of the United States and is void and unenforceable as to this defendant.

Accepting the defendant's contention that it is engaged in interstate commerce, the issue before this court is whether the commece clause of the United States Constitution has, in effect, withdrawn from California the power to regulate matters of local concern (such as the present case) which affect interstate commerce?

It has been stated many times that the commerce clause, which has conferred upon Congress the power to regulate commerce, has not withdrawn from the State the power to regulate or control matters of local concern so long as Congress has not acted in the area, the regulation is nondiscriminatory and does not impose a burden on interstate commerce. (*California v. Thompson,* 313 U.S. 109.) In the areas affecting the health, life and safety of their citizens, the courts have allowed reasonable and non-discriminatory regulation. (*Huron Portland Cement Co. v. Detroit, 362* U.S. 440.)

The Small Loan Law of California is legislation designed for the public welfare. It is primarily to protect the citizens of this state from fraudulent and unconscionable conduct of those in the lending business (*In re Fuller,* 15 Cal.2d 425), and, as such, is a matter of local concern. Californians who deal, negotiate or obligate themselves to appellant should have the same

protection as is afforded to Californians who deal with local small loan concerns. There is no question of discrimination in this case in that the statutes in question apply to both interstate and intrastate lending agencies alike. There is no barrier erected by the statutes in question to stop an interstate concern from doing its business in California. The licensing is not designed to protect local companies from outside competition. The purpose of the legislation is to protect the members of the public in California from the lenders who would otherwise take advantage of them. The degree of regulation contained in the laws of this state with reference to loan sharks is not disproportionate to the evils which exist if the lenders are left to their own devices without licensing and without any regulation by the state. The charges or expenses imposed by the licensing procedure are no larger in amount than is reasonably necessary to defray the administrative expenses involved and could not in any event be classed as being discriminatory or imposing undue restrictions on interstate commerce. The investigation which is made upon the filing of an application for a license is, on its face, designed to ascertain facts which are necessary and proper under the circumstances.[3]

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[3]Financial Code section 24206 provides as follows: *"Investigation; issuance of license.* Upon the filing of the application and the payment of the fees and the approval of the bond, the commissioner shall investigate the facts and if he finds that the financial responsibility, experience, character, and general fitness of the applicant, and its members if the applicant is a copartnership or association, and its officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this division, he shall issue and deliver a license to the applicant to engage in business in accordance with the provisions of this division at the location specified in the applicaton."

The small loan lender usually operates for that segment of the population between the poverty line and the commercial bank window. The people who patronize the small loan business are ordinarily of modest income, without resources to meet unaided the bills brought about by unemployment, sickness or other emergency, with little to pledge as security anything other than their prospects and character, and are likely to be helpless because of their ignorance.

As heretofore indicated, the defendant contends here that since it is engaged in interstate commerce, and is not doing business locally, the commerce clause prohibits California from attempting to license its business. Defendant asserts that there are no contacts with California to subject it to regulation by California, since acceptance and payment of the loan take place in Kentucky.

Under the "minimum contact rule" of *International Shoe Co. v. Washington,* 326 U.S. 310, the California courts could, in all probability, obtain personal jurisdiction of this foreign corporation. There is no doubt that negotiation for the respective loans takes place within the state, and section 24200, Financial Code, requires a license even in the case of negotiation for a small loan. A local credit investigation is secured and the collection of delinquent accounts of necessity takes place in California. The defendant admits that there are currently $3,500,000 in outstanding loans to California residents, and this amount was, at the time of the hearing in the trial court, increasing at an average of $90,000 per week. To argue that defendant is not doing business in California, but engaged only in interstate commerce is to completely ignore the facts of life and

reality. To deny California the power to license and regulate this business the same as it licenses and regulates local concerns doing the same business would, in effect, give an immunity to this defendant to which it is not entitled under the circumstances. The commerce clause does not ". . . preclude a State from giving needful protection to its citizens in the course of their contacts with businesses conducted by outsiders when the legislation by which this is accomplished is general in its scope, is not aimed at interstate or foreign commerce, and involves merely burdens incident to effective administration." (*Union Brokerage Co. v. Jensen,* 322 U.S. 202, 212.) Certainly the legislation in question, as heretofore indicated, is designed to protect California residents, is general in scope and imposes no undue burden on interstate commerce. Fairfax should not be allowed to escape state regulation merely because it is also engaged in interstate commerce. As a practical matter, it would be next to impossible for the state to regulate the activities of this business without the license requirement.

In *Lilly & Co. v. Sav-On-Drugs,* 366 U.S. 276, Mr. Justice Black, speaking for that court, upheld the State's right to license a foreign corporation which engaged in both interstate and intrastate commerce. The court refused to extend the immunity of *Robbins v. Shelby Co. Taxing Dist.,* 120 U.S. 489, since Lilly was engaged in local activities and not just interstate sales. In the case at bar, the defendant's activities are so localized by the very nature of its business as to cast aside the immunity of the *"Drummer"* cases.

International Text Book Co. v. Pigg, 217 U.S. 91, cited by appellant, is of little assistance to it for two

reasons. First, that was a case involving the foreign corporation's right to sue in the state court, which is not the issue before this court. Secondly, the court in the *"Text Book"* case found the license requirement to be discriminatory and a direct burden on interstate commerce. No such burden or discrimination can be found in the case before us.

It should also be noted that when the burdens imposed by local legislation become too great, Congress may legislate to secure uniformity or to protect the national interest. This is a legislative and not a judicial function, and, so far as we can determine, no such legislation has ever been enacted. (*South Carolina State H. Dept. v. Barnwell Bros.*, 303 U.S. 177.)

The order granting the preliminary injunction is affirmed.

Fourt, *J.*

We concur:

Wood, *P. J.*

Lillie, *J.*

Certified for non-publication in Official Reports under Rule 976.

Wood, *P. J.*

Fourt, *J.*

Lillie, *J.*

APPENDIX "B".

Opinion of the Superior Court.

The State of California seeks to enjoin a Kentucky corporation from conducting a small-loan business in California without securing a license. Operating out of Louisville, Kentucky, defendant makes small loans by mail to residents of California and of thirty-one other states. Solicitation of borrowers is by mail. The loan application and note are mailed by the borrower to Kentucky, and the money lent by defendant comes from Kentucky to the borrower. Repayments go back by mail to Kentucky. As might be expected, defendant does not lend money to all comers but only to those about whose credit it is satisfied. Its credit investigations for California residents are performed in California by an independent contractor. Collection activities for delinquent accounts which do not respond to importunities by mail, necessarily take place in California and elsewhere at the residence of the borrower. Fairfax Family Fund presently has $3,500,000 in outstanding loans to California residents and is increasing this amount by $90,000 a week, but has not yet obtained the license to conduct a small-loan business in California which is specified in Financial Code, §24200.

Defendant argues it is doing a business across state lines which is exclusively interstate; that the commerce clause of the United States Constitution prohibits California from attempting to license its business. As authority, defendant cites the drummer cases, illustrated by *Robbins v. Shelby County Taxing Dist.*, 120 U.S. 489, and the correspondence school case, *International Textbook Co. v. Pigg*, 217 U.S. 91:

Assuming the small-loan business of the defendant is interstate commerce, that fact alone does not necessarily exempt it from state regulation. A business of a type subject to regulation under the police power of a state for the protection of the health, safety, and welfare of its citizens, even though interstate commerce, may be regulated by a state until such time as the federal government has acted, provided the regulation does not discriminate against nor unreasonably burden that commerce. *Cooley v. Board of Wardens,* 12 How. 299; *Minnesota Rate Cases,* 230 U.S. 352. Even after the federal government has fully occupied the field of regulation of a particular interstate commerce, the states may continue to regulate intrastate and local aspects of the business where such regulation does not conflict with federal policy. *Huron Cement Co. v. Detroit,* 362 U.S. 440, 445-448; *Panhandle Co. v. Michigan Commission,* 341 U.S. 329; *Head v. New Mexico Board,* 374 U.S. 424.

Regulation of Fairfax Family Fund by the State of California is justified on both these grounds. Unlike the drummer for private business, the small-loan money lender is engaged in an occupation traditionally affected with the public interest and subject to the full thrust of regulation under the police power. *In re Fuller,* 15 Cal. 2d 425, 431. Assuming the business to be interstate, the federal government has not acted to regulate it, and until it has done so, the state may act. *Huron Cement Co. v. Detroit,* 362 U.S. 440, and cases there cited; *Kelly v. Washington,* 302 U.S. 1.

Additionally, the business described in this suit is one with both interstate and intrastate aspects. Obviously, no small-loan business can successfully operate without

credit investigations and without routine resort to local process for collections. In these aspects, both of which cut to the heart of any money lending, the small-loan business is intimately related to local affairs and may properly be locally licensed to protect the public welfare. The same principle applies to the writing of insurance, *Travelers Health Assn. v. Virginia,* 339 U.S. 643, and the sale of securities, *B. C. Turf Club v. Daugherty,* 94 Cal. App. 2d 320, 329. See also *Eli Lilly v. Sav-On-Drugs,* 366 U.S. 276.

This is not a case involving an interstate business whose local effects are purely incidental, such as the sale of goods by mail order. Regardless of the current constitutional status of a state's power to regulate the sale of goods across state lines (*Breard v. Alexandria,* 341 U.S. 622; *Eli Lilly v. Sav-On-Drugs,* 366 U.S. 276), a small-loan business carried on with California borrowers is subject to California regulation, both under the state's police power over interstate commerce in the absence of federal regulation, and under the state's power to regulate intrastate aspects of an interstate business in a manner which does not discriminate against nor unduly burden that commerce. There is no discrimination here. The burden is justifiable. The preliminary injunction may issue.

Dated: January 29, 1964.

Macklin Fleming
Judge of the Superior Court

APPENDIX "C".

1. Judgment of the District Court of Appeal.

[Title of Court and Cause]

The above entitled cause having been fully argued, submitted and taken under advisement, It Is Ordered, Adjudged and Decreed by the Court that the order granting the preliminary injunction is affirmed.

Respondent to recover costs.

I, J. T. Alley, Clerk of the District Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on the 21st day of December, 1964, and now remaining of record in my office.

Dated: February 23, 1965.

J. T. Alley, Clerk
By Clay Robbins Jr. Deputy

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2. Judgment of the Superior Court.

The above entitled matter having regularly come on for hearing in Department 15 on January 3, 1964, pursuant to plaintiff's motion for a preliminary injunction, and plaintiff appearing by its counsel, Stanley Mosk, Attorney General, by H. Warren Siegel, Deputy Attorney General, and defendant appearing by its counsel, Herman Selvin, and the court being fully advised in the premises, and good cause appearing therefor,

It Is Ordered that during the pendency of this action, or until the court shall otherwise order, the defendant and any successor in interest, and their agents, servants, employees, and representatives, and any and all persons acting in concert or participation or on behalf of it or them, shall be and hereby are enjoined and restrained from engaging in or performing, directly or indirectly, by mail or otherwise, in the business of soliciting, negotiating or making, for itself or for others, loans of money, credit, goods, or things in action, in the amount of or of the value of $300 or less, or from directly or indirectly making or causing to be made any credit investigation or report relative to a loan, credit, goods, or things in action, in the amount of or value of $300 or less, to be, or actually solicited, negotiated or made to a person residing in or situated in California, or from advertising such loans, or doing any act in California in furtherance of the aforementioned acts, unless and until a small loan license is obtained in compliance with Financial Code section 24200.

Dated: January 31, 1964.

M. Fleming
Judge of the Superior Court

APPENDIX "D".

The Statute Involved.

24200. No person shall engage in the business of making or negotiating, for himself, or another, loans of money, credit, goods, or things in action, in the amount or of the value of three hundred dollars ($300) or less, without first obtaining a license from the commissioner.

24201. Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the following and such further information as the commissioner requires:

(a) The name of the applicant, and if a partnership or association, the names of the members; and if a corporation, the names of each officer and director.

(b) The residence and business addresses of each person named in subdivision (a) of this section.

(c) The county and municipality with the street numbers if any, where business is to be conducted.

24202. At the time of making the application, the applicant shall pay to the commissioner the sum of one hundred dollars ($100) as a fee for investigating the application and the additional sum of two hundred dollars ($200) as an annual license fee for a period terminating on the last day of the current calendar year. If the application is filed after June 30th in any year the additional sum paid as an annual license fee shall be only one hundred dollars ($100).

24203. The applicant shall file with the application a bond in the sum of one thousand dollars ($1,000) approved by the commissioner in which the applicant

is the obligor, with one or more sureties approved by the commissioner whose liability as sureties need not exceed that amount in the aggregate.

24204. The bond shall run to the State for the use of the State and of any person who has a cause of action against the obligor of the bond under the provisions of this division. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this division and of the rules and regulations made by the commissioner, and will pay to the State and to any person all money that becomes due or owing to the State or to such person from the obligor under the provisions of this division.

24205. If the commissioner finds at any time that a bond is insecure or exhausted, in whole or in part, or otherwise doubtful, the licensee shall file an additional bond in the sum of not more than one thousand dollars ($1,000), approved by the commissioner, with one or more sureties approved by the commissioner, and of the character specified in this article for an original bond. The bond shall be filed within 10 days from written demand upon the licensee by the commissioner.

24206. Upon the filing of the application and the payment of the fees and the approval of the bond, the commissioner shall investigate the facts and if he finds that the financial responsibility, experience, character, and general fitness of the applicant, and its members if the applicant is a copartnership or association, and its officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of

the division, he shall issue and deliver a license to the applicant to engage in business in accordance with the provisions of the division at the location specified in the application.

* * *

24210. If the commissioner finds that any applicant does not possess the requirements specified in this chapter, he shall, upon reasonable opportunity to be heard, deny the application and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the one hundred dollars ($100) investigation fee to cover the costs of investigating the application. The commissioner shall within 60 days from the filing of the application for a license with the fees and the approved bond, either issue a license or file a statement of issues prepared in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code.

* * *

24607. Whenever in the opinion of the commissioner any person is engaged in business as a lender or broker as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order said person or licensee to desist and to refrain from engaging in such business or further violating this division. If, after the order is made, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

* * *

24608. Whenever the commissioner believes from evidence satisfactory to him that any person has violated

or is about to violate any provision of this division, or any provision of any order, license, decision, demand, or requirement, he may bring an action in the name of the people against that person, to enjoin him from continuing such violation or engaging therein or doing any act in furtherance thereof. In the action the court may enter an order or judgment awarding such preliminary or final injunction as is proper.

24609. The commissioner shall, upon notice and reasonable opportunity to be heard, suspend or revoke any license if he finds any of the following:

(a) That the licensee has failed to pay the annual license fee, to maintain in effect the bond or bonds required under this division, or to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) That the licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(c) That any fact or condition exists which, if it had existed at the time of the original application for such license reasonably would have warranted the commissioner in refusing originally to issue the license.